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9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**
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12 William Thorton,

13 Petitioner,

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15 v.

16
17 Raythel Fisher, Jr.,

18 Respondent.

Case No.: 16cv2492 PCL

ORDER:

**DENYING MOTION FOR
APPOINTMENT OF COUNSEL (Doc.
40.)**

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20 Petitioner requests the Court appoint counsel to assist him in his habeas case. (Doc.
21 40.) The Sixth Amendment right to counsel does not extend to federal habeas corpus
22 actions by state prisoners. *See McCleskey v. Zant*, 499 U.S. 467, 495 (1991) (citing
23 *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987) (“The right to appointed counsel
24 extends to the first appeal of right, and no further”); *Nevius v. Sumner*, 105 F.3d 453, 460
25 (9th Cir. 1996) (noting that there currently exists no constitutional right to appointment of
26 counsel in habeas proceedings); *Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th Cir. 1986).

27 However, courts may appoint counsel for financially eligible habeas petitioners
28 seeking relief pursuant to 28 U.S.C. § 2254 where “the interests of justice so require.” 18
U.S.C. § 3006A(a)(2) (B); *Chaney*, 801 F.2d at 1196. Whether or not to appoint counsel

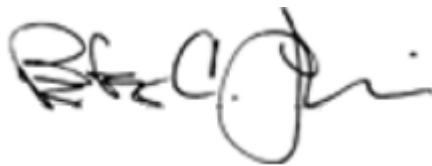
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2 is a matter left to the court's discretion, unless an evidentiary hearing is necessary. *See*
3 *Knaubert v. Goldsmith*, 791 F.2d 722, 728-30 (9th Cir. 1986) (explaining that the
4 interests of justice require appointment of counsel when the court conducts an evidentiary
5 hearing on the petition).

6 A court's discretion to appoint counsel may be exercised only under "exceptional
7 circumstances." *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991). "A finding of
8 exceptional circumstances requires an evaluation of both 'the likelihood of success on the
9 merits and the ability of the petitioner to articulate his claims pro se in light of the
10 complexity of the legal issues involved.' Neither of these issues is dispositive and both
11 must be viewed together before reaching a decision." *Id.* (quoting *Wilborn v.*
12 *Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986)).

13 Petitioner argues that he is unable to represent herself in habeas proceedings
14 because he is untrained in the law and his case is legally complicated. (Doc. 17.)
15 However, "[a]ny pro se litigant certainly would be better served with the assistance of
16 counsel." *Rand v. Rowland*, 113 F.3d 1520, 1525 (9th Cir. 1997) (overruled on other
17 grounds, 154 F.3d 952 (9th Cir. 1998)). But a petitioner is only entitled to appointed
18 counsel if he can show "that because of the complexity of the claims he [is] unable to
19 articulate his positions." *Rand*, 113 F.3d at 1525. Petitioner has been able to adequately
20 articulate his habeas claims in his Petition. Accordingly, Petitioner's Motion for
21 Appointment of Counsel is **DENIED** without prejudice.

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23 **IT IS SO ORDERED.**

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25 DATE: August 28, 2017

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Peter C. Lewis
United States Magistrate Judge